Hearing Date: July 28, 2005
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ITEM ___

RECONSIDERATION OF PRIOR STATEMENT OF DECISION DRAFT STAFF ANALYSIS

Penal Code Section 1417.3, as amended by Statutes 1985, Chapter 875; Statutes 1986, Chapter 734; and Statutes 1990, Chapter 382

98-TC-07

Photographic Record of Evidence
(04-RL-9807-09)

Reconsideration Directed by Statutes 2004, Chapter 316, Section 3, Subdivision (d)
(Assem. Bill No. 2851)

EXECUTIVE SUMMARY

In Statutes 2004, chapter 316, section 3, subdivision (d), the Legislature directed the Commission on State Mandates (Commission) to reconsider whether the *Photographic Record of Evidence* test claim (No. 98-TC-07) constitutes a reimbursable mandate under article XIII B, section 6 of the California Constitution "in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted: [¶] … [¶] (d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990)."

On October 26, 2000, the Commission found that the test claim statute imposes a reimbursable mandate on local law enforcement agencies for the activities listed in the Statement of Decision. The parameters and guidelines, adopted in February 2002, specified the reimbursable activities.

The Legislative Analyst's Office (LAO) argues that the test clam statute caused a shift in responsibility for handling court exhibits from the courts (which were funded by county budgets at the time the test claim statute was enacted) to local agencies. Therefore, under the rule in *City of San Jose v. State of California*,[1] a shift in responsibility between local governments is not a reimbursable state-mandated program. LAO also argues that the test claim statute may impose no net costs, thereby precluding a finding that it is a reimbursable mandate under Government Code section 17556, subdivision (e).

Conclusion

Staff finds that effective July 1, 2005, the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for all activities listed in the

[1] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

Photographic Record of Evidence Statement of Decision (No. 98-TC-07) except for transporting, storing and maintaining exhibits, which activities were shifted from county-funded courts to local agencies. Specifically, staff finds that the following activities are no longer reimbursable.

- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)[2]

Recommendation

Therefore, staff recommends that the Commission adopt this analysis and amend the *Photographic Record of Evidence* Statement of Decision (98-TC-07), effective July 1, 2005, to be consistent with this analysis.

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[2] Commission on State Mandates, Statement of Decision for Photographic Record of Evidence, 98-TC-07, page 7.

STAFF ANALYSIS

Chronology

10/22/98	Test Claim filed by Los Angeles Police Department
10/26/00	Commission adopted Statement of Decision
11/21/00	Claimant submitted proposed parameters and guidelines
02/28/02	Commission adopted parameters and guidelines
10/24/02	Commission adopted statewide cost estimate
12/31/03	Legislative Analyst's Office (LAO) issued report, *New Mandates: Analysis of Measures Requiring Reimbursement* recommending reconsideration of the *Photographic Record of Evidence* test claim
08/25/04	Legislature enacted Assembly Bill 2851, an urgency statute requiring the Commission to reconsider *Photographic Record of Evidence* (effective 8/25/04)
04/25/05	LAO submits comments on the reconsideration
05/24/05	Commission issues draft staff analysis on the reconsideration

Background

Statutes 2004, chapter 316, section 3, subdivision (d), (Assem. Bill No. 2851) directs the Commission to reconsider whether the *Photographic Record of Evidence* mandate constitutes a reimbursable program under article XIII B, section 6 of the California Constitution, as follows:

> Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted: [¶] … [¶]
>
> (d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

The Test Claim Statute

Penal Code section 1417.3, as added by Statutes 1985, chapter 875, and amended by Statutes 1986, chapter 734, and Statutes 1990, chapter 382, requires a photographic record for exhibits in a criminal trial that pose a security, storage, or safety problem. A photographic record is also required for exhibits that are toxic or pose a health hazard to humans, accompanied by a certified chemical analysis.

Trial Court Funding

Because the LAO's comments (see below) have made trial court funding an issue in this reconsideration, a brief history of trial court funding merits discussion.

Historically, California trial courts have been funded by counties. In 1985, the Legislature enacted the Trial Court Funding Act (Stats. 1985, ch. 1607), providing for state funding of trial courts with retention of local administrative control. The bill provided for block grants to

counties based on a formula of reimbursement for statutorily authorized judicial positions.[3] If a county opted into the program, it waived claims for reimbursement for state–mandated local programs under article XIII B, section 6.[4] However, no funds were appropriated to implement the 1985 act.[5]

In 1988, the Legislature enacted the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945). Under this act, the state accepted significant responsibility for funding trial courts beginning in 1989.[6] This law retained the provision for counties to opt in to trial court funding,[7] and that those that did so waived their claims for mandate reimbursement.[8]

The Legislature enacted the Trial Court Realignment and Efficiency Act in 1991 (Stats. 1991, ch. 90) to increase state funding for trial courts and streamline court administration through trial court coordination and financial information reporting.[9] By 1997, counties bore about 60 percent of trial court costs for specified operations, and the state the remaining 40 percent.[10]

On September 13, 1997, the Legislature enacted the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) that restructured the trial court funding system. This act removed the local "opt-in" provisions and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-98, while freezing county contributions at fiscal year 1994-95 levels.[11]

Commission Statement of Decision

On October 26, 2000, the Commission adopted the *Photographic Record of Evidence* Statement of Decision, determining that the test claim statute imposes a reimbursable mandate on local law

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[3] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) p. 11. See < http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf> as of May 6, 2005.

[4] Former Government Code sections 77203.5 and 77005.

[5] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) p. 11. See < http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf> as of May 6, 2005.

[6] *Ibid.*

[7] Former Government Code section 77004 defined "option county" as, "a county which has adopted the provisions of this chapter for the current fiscal year."

[8] Former Government Code sections 77203.5 and 77005.

[9] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) p. 11. See < http://www.courtinfo.ca.gov/reference/documents/tcfnews.pdf> as of May 6, 2005.

[10] Assembly Committee on the Judiciary, Analysis of Assembly Bill 233 (1997-1998 Reg. Sess.), as of March 10, 1997, page 1.

[11] *Ibid.*

enforcement agencies (Commission claim no. 98-TC-07, filed by the Los Angeles Police Department).

The Commission determined that the following activities are reimbursable:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Commission Parameters and Guidelines

The Commission adopted parameters and guidelines for the test claim statute in February 2002. Under the heading "Reimbursable Costs," the parameters and guidelines state:

> For each eligible claimant, the following activities are eligible for reimbursement:
>
> A. Administrative Activities
>
> 1. Developing internal policies, procedures, and manuals, to implement the activities … (one-time activity).
>
> 2. Maintaining files manually or electronically pursuant to implementation of activities listed in … these Parameters and Guidelines. The cost of this activity will be prorated for photographs actually introduced or offered as exhibits (ongoing activity).
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> B. Photographic Record of Evidence (Pen. Code, § 1417.3(a))
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> For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans, including the definition of hazardous waste in 40 Code of Federal Regulations part 261, or human health hazards which are subject to Health and Safety Code sections 117600 *et seq.*, or Health and Safety Code sections 25140, *et seq.*:
>
> 1. Purchasing equipment and supplies reasonably necessary to photograph the exhibits, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.
>
> 2. Taking of the photographs, sorting and storing photographs, and developing and printing photographs. This activity is limited to photographs actually introduced or offered into evidence as exhibits. Claimant must provide supporting documentation with subsequent

reimbursement claims that the court has deemed the exhibit a security, safety or storage problem by providing a copy of the court order, local rule, or other proof of the court's determination.

C. Provision of Certified Written Chemical Analysis (Pen. Code, § 1417.3 (b))

For those exhibits that pose a health hazard to humans, the sampling, analysis, and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis. This does not include reimbursement for sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code sections 11054 et. seq. unless the exhibit is toxic and poses a health hazard to humans.

D. Storage of Exhibits (Cal. Code of Regs., tit. 2, § 1183.1(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans for which the local entity offers or introduces a photographic record of evidence:

Transportation to and maintenance within an appropriate storage facility for the type of exhibit. Storage of the exhibit shall be from the time of photographing until after final determination of the action as prescribed by Penal Code sections 1417.1, 1417.5, 1417.6, or court order or rule of court that dictates the retention schedule for exhibits in criminal trials.

State Agency Position

Legislative Analyst's Office: The Legislative Analyst's Office (LAO), in its publication *New Mandates: Analysis of Measures Requiring Reimbursement* (December 2003),[12] reviews 23 Commission decisions, including *Photographic Record of Evidence*. LAO asserts that when the test claim legislation was enacted (in 1985, 1986, and 1990) counties had primary or exclusive responsibility for funding court operations. Thus, the test claim statute was merely a shift of responsibility for handling exhibits from one local agency (courts) to another (local law enforcement agencies). According to LAO, under *City of San Jose v. State of California*,[13] this type of shift is not a reimbursable state mandate.

LAO also raises the issue of whether the test claim legislation was "cost neutral" to counties, as suggested by testimony of the County Clerk's Association when the bill was enacted.[14] If so, LAO suggests that Government Code section 17556, subdivision (e) would render the test claim non-reimbursable, as a measure that does not impose net costs.

[12] See <http://www.lao.ca.gov/2003/state_mandates/state_mandates_1203.html> as of February 15, 2005.

[13] *City of San Jose v. State of California, supra*, 45 Cal.App.4th 1802.

[14] This testimony was alluded to, but not quoted or cited.

In comments submitted on April 25, 2005, LAO repeats these assertions, and provides more detailed background information on the history of trial-court funding.

No other state agency submitted comments on this reconsideration.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[15] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[16] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[17] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[18]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[19]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[20] To determine if the

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[15] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[16] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[17] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[18] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[19] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[20] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[21] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[22]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[23]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[24] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[25]

Issue 1: What is the effective date of the Commission's decision on reconsideration?

Assembly Bill 2851, an urgency statute that became effective on August 25, 2004, directs the Commission to reconsider its statement of decision on the *Photographic Record of Evidence* test claim. According to the legislative history, Assembly Bill 2851 implements the changes recommended by the Assembly Special Committee on State Mandates. This committee was established in 2003 to review all reimbursable state mandates, particularly those that have been suspended or deferred, and to recommend reforms to the reimbursement system.

The parameters and guidelines for the *Photographic Record of Evidence* test claim were adopted in 2002, with a reimbursement period beginning July 1, 1997.

Assembly Bill 2851, however, does not specify the effective date for the Commission's decision on reconsideration.[26] The question is whether the Legislature intended to apply the Commission's decision on reconsideration retroactively back to the original reimbursement period of July 1, 1997 (i.e., to reimbursement claims that have already been filed and may have been partially paid), or to prospective claims filed in future budget years. If the Commission's

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[21] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[22] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[23] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[24] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[25] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[26] In this respect, Assembly Bill 2851 is different than another recent statute directing the Commission to reconsider a prior final decision. Statutes 2004, chapter 227, directs the Commission to reconsider Board of Control test claims relating to regional housing. Section 109 of the bill states "[a]ny changes by the commission shall be deemed effective July 1, 2004."

decision on reconsideration is applied retroactively, the decision may change the legal consequences of these past events.

Unlike other statutes directing reconsideration of Commission decisions (e.g., Sen. Bill No. 1895), Assembly Bill 2851 is *not* a trailer bill to the Budget Act of 2004. Thus, for the reasons below, staff finds the Legislature intended that the Commission's decision on reconsideration apply prospectively to future budget years only, beginning July 1, 2005.

A statute may be applied retroactively only if the statute contains "express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."[27] In *McClung v. Employment Development Department*, the California Supreme court explained this rule as follows:

> "Generally, statutes operate prospectively only." [Citation omitted.] "The presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly … For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." [Citation omitted.] "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." [Citation omitted.]
>
> This is not to say that a statute may never apply retroactively. "A statute's retroactivity is, *in the first instance, a policy determination for the Legislature* and one to which courts defer absent 'some constitutional objection' to retroactivity." [Citation omitted.] But it has long been established that a statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." [Citation omitted.] "*A statute may be applied retroactively only if it contains express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.*" [Citation omitted.] (Emphasis added.)[28]

There is nothing in the plain language of AB 2851 or its legislative history to suggest that the Legislature intended to apply the Commission's decision on reconsideration retroactively. In the absence of clear legislative intent to the contrary, staff finds that AB 2851 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, to the extent the Commission modifies its prior decision in *Photographic Record of Evidence*, the changes would become effective for claims filed in the 2005-2006 fiscal year.

Issue 2: Are school districts or community college districts eligible claimants?

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[27] *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.

[28] *Ibid.*

The original Statement of Decision applied to "law enforcement agencies."[29] In the parameters and guidelines, this was interpreted to include school district law enforcement agencies.[30] The issue, therefore, is whether the Commission erred in including school districts as eligible claimants.

Staff finds that it did. More specifically, local agencies (cities, counties, and special districts), not school districts (within the meaning of Government Code section 17519),[31] have the responsibility for carrying out the "essential and basic functions" of police protection. Pursuant to Education Code section 38000:[32]

> [t]he governing board of any school district may establish a security department … or a police department …[and] may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

Education Code section 72330, derived from the same 1959 Education Code section, provides the law for community colleges. "The governing board of a community college district may establish a community college police department … [and] may employ personnel as necessary to enforce the law on or near the campus. … This subdivision shall not be construed to require the employment by a community college district of any additional personnel."

In a 2003 California Supreme Court mandates decision, the Court found (affirming the holding in *City of Merced v. State of California* (1984) 153 Cal.App.3d 777), "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate."[33] Education Code sections 38000 and 72330 permit K through 12 and community college districts to establish police departments, but do not require it. Nor are there any other readily apparent statutes or case law *requiring* districts to establish or maintain police departments. Therefore, forming a school district police department and employing peace officers is a discretionary activity on the part of school districts.

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[29] Commission on State Mandates, *Photographic Record of Evidence* Statement of Decision, issued October 31, 2000, page 7.

[30] Commission on State Mandates, *Photographic Record of Evidence* Parameters and Guidelines, adopted February 28, 2002, page 1.

[31] "'School district' means any school district, community college district, or county superintendent of schools."

[32] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

[33] *Kern High School Dist., supra,* 30 Cal.4th 727, 743.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[34] Although the Legislature is permitted to authorize school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[35] nowhere in the Constitution is the suggestion that school districts are functioning within their essential educational function by operating police departments. In contrast, article XI, Local Government, provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff, and section 5, City charter provision, specifies that city charters are to provide for the "government of the city police force." Thus, at the Constitutional level, cities and counties are given local law enforcement responsibilities, while school districts are only statutorily permitted to form police departments.

Moreover, operating police departments is not an essential governmental function of providing *public education*. Although maintaining safe K through 12 schools is required under the state Constitution, this is not necessarily accomplished through a school district police department independent of the public safety services provided by the cities and counties a school district serves. [36]

The California Supreme Court in *Department of Finance*, *supra*, 30 Cal.4th at page 731, stated:

> [*W]e reject claimants' assertion that they have been legally compelled to incur* notice and agenda *costs,* and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]

Pursuant to state law, school districts, the essential governmental function of which is to provide public education, remain free to discontinue providing their own police department, and statutory duties that follow from such discretionary activities do not impose a reimbursable state mandate. Therefore, school districts are not eligible claimants under this claim. With that determination, the analysis that follows is limited to findings on behalf of cities, counties, and special districts.

Issue 3: Does the test claim legislation constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California

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[34] California Constitution, article IX, section 1.

[35] California Constitution, article IX, section 14.

[36] Article I, section 28, subdivision (c) of the California Constitution provides "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448: "[H]owever, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, 'it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.'"

Constitution in light of federal statutes enacted and federal and state court decisions rendered since the test claim statutes were enacted?

Assembly Bill 2851 directs the Commission to reconsider this claim "in light of federal statutes enacted and federal and state court decisions rendered since the test claim statutes were enacted." Staff is not aware of any federal statutes or federal court decisions that affect the *Photographic Record of Evidence* test claim, and no federal statutes or cases have been identified by the parties or interested parties for this particular claim.

In order for the *Photographic Record of Evidence* test claim statute to be subject to article XIII B, section 6 of the California Constitution, the statute must constitute a "program." This means a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[37] Only one of these findings is necessary to trigger article XIII B, section 6.[38]

The test claim legislation requires local agencies to photograph exhibits that the court determines are a "security, storage, or safety problem, as recommended by the clerk of the court."[39] It also requires exhibits that are toxic that pose a health hazard to humans, to be introduced to the court in the form of a photographic record and a certified chemical analysis.[40] In the original decision, the Commission found that the test claim statute was not unique to local law enforcement agencies because the requirement to introduce exhibits as photographs and/or chemical analyses applies to both the prosecution and the defense, whichever party introduces an exhibit.

Even though these requirements are not unique to government, however, the Commission found that introducing exhibits to aid in the prosecution of crime are law enforcement duties within the purview of public safety, which carries out a governmental function of providing a service to the public. Therefore, staff finds here, as in the prior final decision, that the *Photographic Record of Evidence* test claim statute constitutes a program within the meaning of article XIII B, section 6.

Issue 4: Does the test claim statute impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6?

According to LAO, when the test claim legislation was enacted (in 1985, and amended in 1986 and 1990) counties had primary or exclusive responsibility for funding court operations. Thus, the test claim statute was merely a shift of responsibility for handling exhibits from one local agency (courts) to another (local law enforcement agencies). Under *City of San Jose v. State of California*,[41] this type of shift is not a reimbursable state mandate.

As discussed above, in 1985, the Legislature enacted the Trial Court Funding Act (Stats. 1985, ch. 1607), providing for state funding of trial courts with retention of local administrative

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[37] *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56.

[38] *Carmel Valley Fire Protection Dist*. (1987) 190 Cal.App.3d 521, 537.

[39] Penal Code section 1417.3, subdivision (a).

[40] Penal Code section 1417.3, subdivision (b).

[41] *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802.

control. The bill provided block grants to counties based on a formula of reimbursement for statutorily authorized judicial positions.[42] If a county opted in to the program, it waived claims for reimbursement for state–mandated local programs under article XIII B, section 6.[43] However, no funds were appropriated to implement the 1985 act.[44] Therefore, when the test claim statute was enacted in 1985, counties had financial and administrative control of trial (superior and municipal) courts.[45]

Since counties had control of trial courts in 1985, they also had custody of admitted exhibits.[46] It follows that counties had the responsibility to transport, store, and maintain the court exhibits in their custody. Although there was a shift in responsibility for storing, transporting and maintaining exhibits from the courts to county law enforcement agencies, the shift was within county departments (or at least within the county budget areas). Therefore, the activities of storing, transporting and maintaining exhibits were not new to county law enforcement agencies at the time the test claim statute was enacted. The purpose of article XIII B is to prevent the state from shifting to local agencies the financial responsibility for providing public services in view of restrictions on the taxing and spending powers of local agencies.[47] Here, there was no shift from the state (even though the state later took over trial court funding).

Staff finds, therefore, that the activities of transporting, storing and maintaining exhibits are not state-mandated activities on county law enforcement agencies because counties already had this responsibility at the time the test claim statute was enacted, i.e., the activities were not new as to counties. This is not true, however, for non-county law enforcement agencies.

The inquiry, therefore, must continue as to whether transporting, storing and maintaining exhibits is a new program or higher level of service on cities or special districts with law enforcement responsibilities. Thus, the next issue is whether the test claim statute shifted these activities from the court to these cities or special districts.

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[42] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) p. 11. See < http://www.courtinfo.ca.gov/reference/documents/ tcfnews.pdf> as of May 6, 2005.

[43] Former Government Code sections 77203.5 and 77005.

[44] Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) p. 11. See < http://www.courtinfo.ca.gov/reference/documents/ tcfnews.pdf> as of May 6, 2005.

[45] "It has long been the law in California that, 'the expense of capture, detention and prosecution of persons charged with crime is to be borne by the county ….'" *City of San Jose v. State of California, supra,* 45 Cal. App. 4th 1802, 1815; See also Government Code section 29602.

[46] Former Penal Code section 1418 provided for disposition of exhibits after a criminal conviction or the end of proceedings. Three months after notifying the owner of the exhibits' whereabouts, the court may "order all such exhibits … as may be released from *the custody of the court* without prejudice to the state, delivered to such party." [Emphasis added.]

[47] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 876.

In the case *City of San Jose v. State of California*,[48] the court faced the question of whether a statute constituted a new program or higher level of service within the meaning of article XIII B, section 6.[49] The statute at issue authorized counties to charge booking fees to cities and other local agencies for persons arrested and booked into county jails by employees of the cities or other local agencies. The city argued that the statute was a state-mandated program under article XIII B, section 6 for which the state must reimburse costs. The state argued that the statute simply authorized allocation of booking costs, a cost formerly borne solely by counties, among all local agencies responsible for arrests. The state alleged that since there was no shifting of costs from state to local government (only a local to local shift) the statute did not come within article XIII B, section 6, so no reimbursement was necessary.[50]

The court agreed with the state. It noted that the "flaw in the City's reliance on Lucia Mar[51] is that in our case the shift in funding is not from the State to the local entity but from county to city."[52] The court stated,

> Article XIII B treats cities and counties alike as 'local government.' … Thus, for purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike as part of 'local government'; both are considered local agencies or political subdivisions of the State. Nothing in article XIII B prohibits the shifting of costs between local governmental entities.[53]

The reasoning of *City of San Jose* applies to this case. The duties of storing, transporting and maintaining exhibits were "shifted" by the test claim statute from the county courts to city and other local agencies. Therefore, under the holding in *City of San Jose*, the prior Commission decision in *Photographic Record of Evidence* was incorrect as to transporting, storing and maintaining exhibits, which is not a new program or higher level of service. Because these activities were shifted between local governments, staff finds that they are not a reimbursable mandate.

As to other activities in the Statement of Decision, the Commission found them to be a new program or higher level of service, as follows:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

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[48] *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802.

[49] *Id.* at page 1810.

[50] *Id.* at page 1806.

[51] *Lucia Mar, supra,* 44 Cal.3d 830. In *Lucia Mar*, the court found that a shift in funding from the state to a local entity is a reimbursable mandate.

[52] *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802, 1812.

[53] *Id.* at page 1816.

- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Before the test claim statute, local agencies were not required to provide a photographic record of exhibits that posed a security, safety, or storage problem, or that posed a health hazard.[54] Nor were local agencies required to provide a certified written chemical analysis of exhibits that posed a health hazard. Therefore, staff finds that these activities are a new program or higher level of service, so the analysis as to these activities must continue.

Issue 5: Does the test claim statute impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6, and Government Code section 17556 ?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[55] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, (as amended by Stats. 2004, ch. 895, Assem. Bill No. 2855), provides:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
>
> (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
>
> (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government,

[54] Former Penal Code section 1418.6, which authorized the court to order the release exhibits before the final determination of the action or proceedings, required a photographic record of released material. This statute, however, was permissive in that it authorized but did not require the court to release the exhibits.

[55] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

As discussed above, the LAO stated that in the legislative history of the test claim statute, the bill's sponsor (County Clerk's Association) suggested the bill would be cost-neutral on counties.

A review of the legislative history of the test claim statute does indicate that the Legislature received information as to cost savings. For example, the following statement appears in a bill analysis, "The Judicial Council advises that the bill's various provisions probably would result in savings to counties, by reducing the time period during which courts must retain exhibits."[56]

In determining issues under Government Code section 17556, the Commission must base its findings on substantial evidence in the record.[57]

> [S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[58]

The Commission's finding must also be supported by, "… all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."[59]

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[56] Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of Assembly Bill 556 (1985-86 Reg. Sess.), as amended August 20, 1985, page 2.

[57] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515. Government Code section 17559, subdivision (b).

[58] *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 335.

[59] *Ibid.*

Staff finds that the administrative record, including the legislative history of the test claim statute, does not support a finding of no net costs. Specifically, the record does not support a finding that:

> The statute … or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies … that result in no net costs to the local agencies … or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund … [it].[60]

There is no cost data in the record as to savings incurred as a result of providing a photographic record of evidence aside from an assertion of "probable savings" in the legislative history.

Therefore, in the absence of evidence to the contrary, staff finds that the activities the Commission found reimbursable in the prior Statement of Decision (except the transportation, maintenance, and storage of exhibits, as analyzed above) impose costs mandated by the state within the meaning of article XIII B, section 6, and Government Code section 17556.

CONCLUSION

Staff finds that effective July 1, 2005, the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for all activities listed in the *Photographic Record of Evidence* Statement of Decision (No. 98-TC-07) except for transporting, storing and maintaining exhibits, which activities were shifted from county-funded courts to local agencies. Specifically, staff finds that the following activities are no longer reimbursable.

- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)[61]

Recommendation

Therefore, staff recommends that the Commission adopt this analysis and amend the *Photographic Record of Evidence* Statement of Decision (98-TC-07), effective July 1, 2005, to be consistent with this analysis.

[60] Government Code section 17556, subdivision (e).

[61] Commission on State Mandates, Statement of Decision for Photographic Record of Evidence, 98-TC-07, page 7.